THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.3651 OF 2006

Between:

N.Pitchaiah son of Ramaswamy and four others.

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….petitioners

vs.

The Executive Engineer, Krishna Central Division, Vijayawada

….Respondent

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO.3651 OF 2006

ORAL ORDER

The petitioners' claim to have been granted a lease of an extent of Ac.9.65 guntas of agricultural land in R.S.No.355/15 of Lanka land of Krishna river, Ibrahimpatnam Mandal of Krishna District since about 30 years. When in February 2005 the respondent allegedly threatened the petitioner with dispossession they informed him that they have an existing lease in their favour up to 31-05-2005. Since the threat

was continuing they filed W.P.No.2077 of 2005 for a declaration that the conduct of the respondents is illegal and for a direction to the respondents not to dispossess them from the land in question. In view of the subsistence of valid lease in their favour an interim order was granted by this Court in the said writ petition directing maintenance of *status quo*. Thereafter by a proceedings dated 11-01-2005 the respondent extended the lease of the petitioners in respect of the land in question up to 31-05-2006. In view of this development the writ petition was withdrawn and dismissed as such.

The petitioners were again threatened by dispossession and they learnt that the respondent passed an order dt.23-01-2006 cancelling the lease granted to them by the earlier proceedings dated 11-10-2005 invoking clause/condition No.7 of the conditions of lease contained in proceedings dated 23-07-1998. This condition enables the cancellation of the lease without recording any reasons. The petitioners contend that the condition in a contract where the State is one of the parties incorporating onerous stipulations constitutes arbitrary State conduct and is therefore amenable to judicial review under Article 226 of the Condition.

Admittedly the relationship between the petitioners and the respondent is *qua* a non-statutory contractual instrument. The respondent has cancelled the lease invoking the condition in such a non-statutory contract. Whether clause/condition No.7 is violative of Sec.23 of the Indian Contract Act,1872, is a matter which requires adjudication on a plurality of factual and principled parameters and by the civil court of competent jurisdiction. As the dispute between the petitioners and the respondent i s *qua* a condition of a non-statutory contract and pertains to a post-contractual situation. The grievance urged in this writ petition ought not be considered by this Court under Article 226 of the Constitution. Vide **Radhakrishna Agarwal Vs. State of Bihar**().

There is another grievance of the petitioners namely that the respondent has not yet served on the petitioner a copy of proceedings dated 23-01-2006 but is proceeding to dispossess them. With regard to proceedings dated 23-01-2006 of the respondent, the petitioners have persuaded themselves to approach the Civil Court of competent jurisdiction for appropriate relief.

In the circumstances the writ petition is dismissed but directing the respondent not to take any steps for dispossession of the petitioners except in accordance with law.

The petitioners are also at liberty to pursue their appropriate remedies before the Civil Court of competent jurisdiction in respect of the orders of the respondent dated.23-01-2006, which shall be communicated by the respondent to the petitioner within a period of one (1) week from today. No costs.

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GODA RAGHURAM,J

6TH MARCH 2006

Note:

Issue cc

in two(2)

days.

(B/O)

*TSNR